BORA LASKIN LAW LIBRARY
3 1761 10084454 7

Store
KF
1536
ZA2
T7
1974

Trebilcock, Michael J
Cases and materials on
debtor creditor relations

CASES AND MATERIALS

ON

DEBTOR CREDITOR RELATIONS

Prepared by

M. J. ~~PREBBLE~~ TRIPLE COCK

With the assistance
of -

H. J. RYAN

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

LAW LIBRARY
JAN 16 1974
OF LAW
UNIVERSITY OF TORONTO

TABLE OF CONTENTS

Chapter 1: The Nature of A Debt

A How Debts Arise 1

(a) Stephen's Commentaries, pp. 400-402 1

B The Distinction Between Debt and Damages 3

(a) Salmond and Williams, Law of Contracts, pp. 577-78, 589-90 3
(b) Note 3

C The Extinguishing of Debts 8

(a) Note 8
(b) D & C Builders Ltd. v. Rees 8
(c) Note 12
(d) The Mercantile Law Amendment Act, s. 16 12
(e) Champlain Ready-Mixed Concrete v. Beaupre 12

TABLE OF CONTENTS

Chapter 2: The Scope of Consumer Credit

A The Lenders 14

(a) Final Report of The Select Committee of the Ontario Legislature on Consumer Credit 14

B The Borrowers 17

(a) George Katona, "On The Function of Installment Credit in the United States" 17
(b) D. W. Scott, pamphlet on Referee of Small Claims Court 20
(c) Report of The National Commission on Consumer Finance, Consumer Credit in the United States, 1972, pp. 5-7, 12, 16 21a

C Some Figures 22

(a) Canadian Consumer Credit Factbook, Charts 22, 23, Table 42 22

D The Credit Counselling Service of Metropolitan Toronto 25

(a) Contents of brochure 25
(b) Some case studies 26

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/casesmaterialson00treb

TABLE OF CONTENTS

Chapter 3: Credit: Vice or Virtue

(a) Canadian Consumer Credit Factbook, p. 31 28

(b) Debate: Ziegel and Bray, in the Financial Post 28

(c) E. P. Neufeld, "The Economic Significance of Consumer Credit," Consumer Credit in Canada, p. 5 36

(d) G. Fortin, "The Social Meaning and Implications of Consumer Credit," Consumer Credit in Canada, pp. 30-36 40

TABLE OF CONTENTS

Chapter 4: The Costs of Debt Collecting

(a) T. Ison, "Small Claims" 46

(b) David Caplovitz before The National Commission on Consumer Finance 59

(c) A. A. Leff, "Injury, Ignorance and Spite - The Dynamics of Coercive Collection" 74

(d) David Cayne and M. J. Trebilcock, "Market Considerations in the Formulation of Consumer Protection Policy" 104a

TABLE OF CONTENTS

Chapter 5: Debt and Invasions of Privacy

A What is Privacy? 105

(a) Departments of Communications and of Justice, Privacy and Computers, pp. 12-14, 17-18 105

B The Problem 108

(a) Privacy and Computers, pp. 18-20, 53-54, 55-57, 62-64 108
(b) Some Editorial Comment 113
(c) Some Magazine Comment 115
(d) A Specimen Report 120

C The Common Law Response 122

(a) Note 122
(b) Privacy and Computers, pp. 144-145 127

D The Regulatory Response 129

(a) A Submission by Retail Credit Company of Canada Ltd. 129
(b) Note 142
(c) Bill 101 143
(d) Editorial Comment 156

TABLE OF CONTENTS

Chapter 6: Informal Methods of Debt Collection

A The Scope of the Problem 158

(a) Law Reform Commission of British Columbia, Report on Debtor Creditor Relationships, Part I, pp. 6-10 158
(b) Report of the Committee on the Enforcement of Judgment Debts, (Payne Committee), pp. 319-321 162
(c) Some Dunning Letters 164

B The Existing Law on Harassment 168

(a) Law Reform Commission of British Columbia, pp. 10-15 168
(b) The Debt Collectors Act, R.S.O. 1970, c. 106 171

C Proposals For Reform 172

(a) Law Reform Commission of British Columbia, p. 42 172
(b) Payne Committee, pp. 321, 322 173

D Debt Collection Agencies 174

(a) Note 174
(b) Story on Phil Glanzer 176

E Declaration of Non-Debt 180

(a) T. C. Ison, Materials on Debt Collections, p. 282 180

TABLE OF CONTENTS

Chapter 7: Actions Prior to Judgment

A The Due Process Issue 181

(a) The Fourteenth Amendment 181
(b) Robert Haydock, Jr., "Taking Possession of Collateral by Self-Help after Default" 181
(c) Note 186

B Procedures for Attaching Property 186

(a) The Absconding Debtors Act, ss. 2, 3, 4, 5, 7, 12 186
(b) The Small Claims Courts Act, ss. 164-165 187

C Garnishment 188

(a) The Small Claims Courts Act, ss. 151, 153, 154, 155 188
(b) The Wages Act, s. 9 189

D Arrest 189

(a) The Fraudulent Debtors Arrest Act, ss. 2, 3, 21 189
(b) The Deserted Wives' and Children's Maintenance Act, s. 4 190

E Note: The Criminal Code, s. 653 190

F Wage Assignments 192

(a) The Wages Act, s. 7 192
(b) R. N. Bates, "The Wage Assignment" 193
(c) Act to Amend the Minimum Employment Standards Act, N.B. 198c
(d) Wage Assignments and Bankruptcy 198c
(i) Holy Rosary Credit Union No. 1 198c
(ii) Holy Rosary Credit Union No. 2 198h
(iii) Cangeco (Peterborough) Credit Union Ltd. v. Trentway Bus Lines Ltd. 198i

G Interim Alimony 198l

(a) Divorce Act, s. 10, 14, 15 198l
(b) Judicature Act, s. 81 198m

H A Summary Procedure for Employees 198m

(a) The Master and Servant Act, s. 4 198m

TABLE OF CONTENTS

Chapter 8: Examination of Judgment Debtors

(a) Note 199

(b) The Fraudulent Debtors Arrest Act, ss. 12-13 199

(c) Supreme Court of Ontario Rules of Practice, Rules 587, 588, 591, 592, 594, 595, 596 199

(d) The Small Claims Courts Act, ss. 131-135, 138-140 201

(e) Payne Committee, pp. 246-249, 250-252, 256-258 204

TABLE OF CONTENTS

Chapter 9: Execution

A Introduction 211

(a) Note 211
(b) Rules of Practice 540-581 212
(c) The Small Claims Courts Act 220
(d) The Execution Act 223

B Fieri Facias 233

(a) Introduction: La Forest, "Some Aspects of the Writ of Fieri Facias" 233
(b) Binding Effect 233
(i) La Forest, "Some Aspects of the Writ of Fieri Facias" 233
(ii) The Execution Act, ss. 10, 11 234
(iii) The Land Titles Act, s. 153 234
(c) Issue and Renewal 236
(i) Rules of Practice 545-6, 566 236
(ii) Re Solicitor 238
(iii) Peterboro District Co-Op Services v. Raison 238
(d) Limitation Period 239
(i) The Limitations Act, ss. 1(a), 23(2), 45(1)(c) 239
(ii) Heighington, "Executions Against Lands in Ontario" 240
(e) Exigible Property 242
(i) Generally 242
1. Dunlop, "Execution Against Personal Property in England and British Columbia" 242
2. Land 246
3. Chattels 247
4. Mortgages 247
5. Shares 247
6. Money, securities for money, choses in action, book debts 247
(ii) Equitable and Future Interests 247
1. Kimniak v. Anderson 247
2. Lawson v. Lawson 252
3. The Interest of a Chattel Mortgagor 253
4. The Interest of a Buyer Under a Conditional Sale Contract 253
(iii) Choses in Action: Re A. G. Ontario and Royal Bank of Canada 255
(iv) Legal Interests Subject to Equitable Interests 259
1. Robinson v. Moffat 259
2. McDonald v. Royal Bank 262
3. Davidson v. Davidson 264
4. The Interest of a Chattel Mortgagee 267
5. The Interest of a Seller under a Conditional Sale Contract 268
(v) Joint Tenancies 268
1. The Execution Act, ss. 9, 28 268
2. Power v. Grace 268
3. Note 271
(f) Purchasers of Goods from an Execution Debtor 272
1. The Execution Act, s. 10 272
(g) Purchasers of Goods from the Sheriff 272
1. Note 272
2. Re Montgomery and Wrights Ltd. 272
3. Re Philips and La Paloma Sweets Ltd. 273
4. The Execution Act, s. 15 275
5. The Conditional Sale Contract 275
(i) If registered: Jones Bros. v. Woodhouse 275
(ii) If unregistered 278
(a) The Conditional Sales Act, ss. 2(1)-(5) 278
(b) Commercial Credit Corp. v. Niagara Finance Co. 279
(c) The Personal Property Security Act, s. 22 283
6. The Chattel Mortgage: The Bills of Sale and Chattel Mortgages Act, s. 8 284

TABLE OF CONTENTS

Chapter 9: Execution (Con't)

(h) Function and Responsibility of the Sheriff 284
(i) The Relationship With the Execution Creditor 284
1. Morris v. Salberg 284
2. Graves v. Sprague 289
3. Overn v. Strand 292
(ii) Mechanics of Seizure and Excessive Seizure 295
1. Watson v. Murray 295
2. Re Bishop and Traders Finance Corporation Ltd. 302
(iii) Duty to Get a Fair Price 306
1. Rules of Practice 557-564 306
2. Fair and Co. and Livingston v. Wardstrom 306
(iv) Use of Force 309
1. Vaughan v. McKenzie 309
2. Regina v. Doucette, Dongen and McNutt 311
(i) Priorities Among Creditors 315
(i) The Execution Act, s. 19(5) 315
(ii) The Wages Act, s. 3 316
(iii) The Creditor's Relief Act, ss. 3, 5, 6, 7, 9, 10(1), 16, 26, 32 316
(iv) Roach v. McLachlan 320
(v) Union Bank of Canada v. Taylor 323
(vi) Problem 324
(j) Exemptions 324
(i) The Execution Act, ss. 2-8 324
(ii) The Landlord and Tenant Act, ss. 56-7 324
(iii) The Indian Act, s. 89(1) 325
(iv) Rodi and Wienenberger Aktiengesellschaft v. Kay 325
(v) Langdon v. Traders Finance Corp. Ltd. 329
(vi) Re Kreutzweiser 334

TABLE OF CONTENTS

Chapter 10: Attachment and Garnishment

A Introduction 337

(a) Supreme Court of Ontario Rules of Practice, Rules 597-606 337
(b) The Small Claims Courts Act, ss. 141-155 338
(c) The Creditors' Relief Act, s. 4 342

B Attachment of Wages 342
(a) The Question of Timing 342
(i) Wilson v. Fleming 342
(ii) Garner v. Strickland and Western Forest Industries Ltd. 346
(b) Exemptions 348
(i) The Wages Act, s. 7 348
(ii) R.C.C. Cuming, "Protection of Consumer Borrowers" 348
(iii) The Public Service Act, s. 26 349
(iv) Note 349
(c) Abuse and Reform 350
(i) David Caplovitz on Consumer Finance 350
(ii) Payne Committee 350
(iii) The Attachment of Earnings Act, ss. 3(3), 6(5) 352
(iv) An Act to Amend The Garnishee Act 353
(v) The Employment Standards Act, s. 5 353

C Debts Owing or Accruing 353
(a) The Question of Timing 353
(i) Canadian Bank of Commerce v. Dabrowski and Dabrowski and Hunt 353
(ii) Case and Comment 354
(b) Building Contracts: Sandy v. Yukon Construction Co. Ltd. and Rush and Tompkins Construction Ltd. 356
(c) Floating Charges 360
(i) Kare v. North West Packers Ltd. and McGuckin et al. 360
(ii) Imperial Oil Ltd. v. Abilene Contracting Co. Ltd. 364
(d) Insurance Policies 367
(i) Fouad Bishara Jabbour and Another v. Custodian of Absentee's Property of State of Israel 367
(ii) Israelson v. Dawson 368
(iii) Century Indemnity Co. v. Rogers 370
(iv) Ryan v. Eatock 373
(e) Trust Funds: Webb v. Stenton 374
(f) Bank Accounts 378
(i) Rat Portage Lumber Co. v. Harty 378
(ii) Bagley v. Winsome 387
(g) Joint Bank Accounts 391
(i) Note 391
(ii) D. M. Waters, "The Doctrine of Resulting Trusts in Common Law Canada" 393
(iii) Re Davis, Nash, and Davis v. Royal Bank of Canada 405
(iv) Harrods,Ltd. v. Tester 408
(v) Re Adler 411

TABLE OF CONTENTS

Chapter 11: Fraudulent Conveyances and Preferences

A Fraudulent Conveyances 412

(a) Introduction 412
(i) Pierre R. Loiseaux, Cases on Creditors' Remedies 412
(ii) Garrard Glenn, Fraudulent Conveyances and Preferences 413
(b) The Legislation 425
(i) The Fraudulent Conveyances Act, ss. 1-5 425
(ii) The Bankruptcy Act, s. 50(6) 425
(iii) Supreme Court of Ontario Rules of Practice, Rules 589, 590 426
(c) The Cases: Voluntary Conveyances 426
(i) Freeman v. Pope 426
(ii) Ex Parte Mercer 431
(iii) Atlantic Acceptance Corporation Ltd. v. Distributors Acceptance Corporation Ltd. 438
(iv) Mackay v. Douglas 441
(v) McGuire v. Ottawa Wine Vaults Co. 446
(vi) Williams v. Lloyd In Re Williams 453
(vii) Gauthier et al. v. Woolatt et al. 460
(d) The Cases: Conveyances for Consideration 465
(i) Owen Sound General and Marine Hospital v. Mann 465
(ii) Trustee of Denny v. Denny and Warr 466
(iii) Ferguson v. Lastewka 470
(iv) Re Panfab Corp. Ltd., Duro Lam Ltd. v. Last et al. 475

B Fraudulent Preferences 478

(a) Tywne's Case 478
(b) The Legislation 478
(i) The Assignments and Preferences Act, ss. 4, 5(1), 12(1) 478
(ii) The Bankruptcy Act, ss. 73, 74 480
(iii) Note 480
(iv) In Re Pommier, Brockelsby v. Freedman-Ellis Limited 481
(v) Caulfield, Burns and Gibson Ltd. v. Kitchen and Brooks 487
(vi) Koop v. Smith 490
(vii) Royal Bank of Canada v. Sullivan and Herr 493

TABLE OF CONTENTS

Chapter 12: Residual Methods of Execution

A Introduction 499

(a) C. R. B. Dunlop, "Execution Against Personal Property in England and British Columbia" 499

B Equitable Execution by Way of Receivership 509

(a) The Judicature Act, s. 19(1) 509
(b) The Creditors Relief Act, ss. 23, 24 510
(c) Holmested and Gale, Ontario Judicature Act and Rules of Practice, pp. 119-120, 125-133 510
(d) Re Karch 515
(e) Garry Finance Corporation Limited v. Heizman 517
(f) McCart v. McCart and Adams 519

C Charging Orders 520

(a) The Judicature Act, s. 143 520
(b) S. R. Ellis, "The Charging Order - A Neglected Means of Enforcement?" 521
(c) Holmested and Gale, Vol. 1, p. 426 524

D Sequestration 524

(a) Rules of Practice, 569-579 524
(b) Holmested and Gale, pp. 2294, 2295 524
(c) Question 525

E Mechanics Liens 525

(a) The Mechanics' Lien Act, c. 267 525
(b) Bar Admission Course 1971-72, Creditors' Rights and Bankruptcy, pp. 1-1 to 1-8 542
(c) Macklem and Bristow, Mechanics' Liens in Canada, 409-411 551
(d) Kalbfleisch v. Hurley 554

F Problems on Executions Generally 558

(a) Problems 1-7 558

TABLE OF CONTENTS

BANKRUPTCY

Chapter 13: Introduction

A	History	566
	(a) In England: Tassé Report, pp. 7-11	566
	(b) In Canada: Tassé Report, pp. 13-19, 24-25	569
B	The Constitutional Issue	575
	(a) Tassé Report, pp. 37-40, 42-45	575

TABLE OF CONTENTS

BANKRUPTCY

Chapter 14: The Social Context

A The Tassé Report, pp. 51-62 580

B Zoe Bieler in The Montreal Star, December 6-10, 1971 589

C "Equal Access", The New York Times 606

D "The Growing Popularity of Personal Bankruptcy", Moneysworth 609

E When to Use Bankruptcy, Bar Admission Notes 6-1 6-9 612

TABLE OF CONTENTS

Chapter 15: Alternatives to Bankruptcy

A Note 613

B Case Law on Private Arrangements 613

(a) In Re Sandwich Foundry Company, Ltd. 613
(b) In Re Plaza Music Co. 617

C Orderly Payment of Debts 620

(a) Tassé Report, pp. 31-32, 89-99 620
(b) Canadian Consumer Council, Report on Personal Bankruptcy, pp. 13-24 629
(c) "But What About the Creditor?", Winnipeg Free Press 640

D Proposals 643

(a) The Bankruptcy Act, ss. 32-46, 143, 147 643
(b) Re Hopkins 651
(c) Re Alberta Western Wholesale Lumber Ltd. 656
(d) In Re The Man With the Axe Ltd. 664

TABLE OF CONTENTS

BANKRUPTCY

Chapter 16: Beginning the Process

A An Outline of the Bankruptcy Act 667

B The Bankruptcy Court 677

(a) The Bankruptcy Act, s. 153 677
(b) Types of Claims 678
(i) Re Reynolds 678
(ii) Re Lofsky 681
(iii) Re M. B. Greer & Co. 684
(c) Locality 688
(i) In Re Solloway 688
(ii) In Re Rotenberg 691
(iii) In Re Fairweathers, Ltd. 694

C Debtors and Creditors in Bankruptcy Proceedings 696

(a) Definitions: The Bankruptcy Act, s. 2 696
(b) Infants: In Re Soltykoff 697
(c) Married Women: The Bankruptcy Act, s. 50(3) 698
(d) Debtors Exempt from A Petition for a Receiving Order 699
(i) The Bankruptcy Act, s. 30 699
(ii) Re Gartrell 699
(iii) In Re Pszon 700
(e) The Deceased Debtor: The Bankruptcy Act, ss. 25(17), 26, 31(1) 703
(f) Partnerships 704
(i) The Bankruptcy Act, ss. 25(15), 63, 113 704
(ii) Re Squires Bros. 705
(iii) Re Cluff Bros. 706
(g) The Creditor 708
(i) The Bankruptcy Act, ss. 25(1)(2) 708
(ii) Re Lakin Builders Co. Ltd. 709
(h) Tassé Report, pp. 101-109 713

D Commencement of Proceedings 719
(a) Voluntarily: The Bankruptcy Act, s. 31 719
(b) Involuntarily: The Bankruptcy Act, s. 25 720
(c) Via a Breakdown of a Proposal: The Bankruptcy Act, ss. 39(1), 41(10), 43(1)(4) 722
(d) The First Meeting of Creditors: The Bankruptcy Act, s. 80 723
(e) McEachran "Bankruptcies--The Bane of Business" 724
(f) Tassé Report, pp. 149, 151-3, 158-160 730

E Acts of Bankruptcy 734

(a) The Bankruptcy Act, ss. 24, 25(7) 734
(b) In Re Freeholders Oil Co. Ltd.; Re Glanzer 736
(c) In Re Brady 738
(d) Re Fundy Supplies Ltd. 740
(e) In Re Yasmanicki 744
(f) Re Elkind 745
(g) Re Redbrooke Estates Ltd. 748
(h) In Re Wells 751
(i) In Re Gillingham Estate 754
(j) In Re De La Hooke 755
(k) In Re Tenenbein 760
(l) In Re St. Joseph's Co-op Assoc. 762
(m) Re Stone 763
(n) In Re Shirly 765
(o) Tassé Report, pp. 105-107 767

TABLE OF CONTENTS (Con't)

Chapter 16: Beginning the Process

F Voluntary Assignments When the Debtor Has No Assets 769

(a) The Bankruptcy Act, s. 31 769
(b) Desjardins v. Ferland 769

G Functions of Trustees 771

(a) The Bankruptcy Act, ss. 9-21 771
(b) Gordon, "Operation of A Business in Bankruptcy 781
(c) Farlinger, "Bankruptcy--A Trustee Speaks Out" 785
(d) In Re Bryant, Isard & Co. 792
(e) Potato Distributors Inc. v. Eastern Trust Co. 800
(f) Imperial Bank of Canada v. Barber 804
(g) Re Robitaille 806

TABLE OF CONTENTS

BANKRUPTCY

Chapter 17: The Property of The Bankrupt

A	The Question of Timing	808
	(a) The Bankruptcy Act, ss. 50(4)(5)	808
B	Property Vesting in The Trustee	808
	(a) The Bankruptcy Act, s. 47	808
	(b) Tassé Report, pp. 109-110	808
C	After-Acquired Wages	810
	(a) The Bankruptcy Act, s. 48	810
	(b) Re Hopkins	811
	(c) Re Colthart	813
D	Transactions in Land	816
	(a) The Bankruptcy Act, s. 53	816
E	Protected Transactions	817
	(a) The Bankruptcy Act, s. 75	817
F	Residual Discretion	818
	(a) In Re Thelluson	813
G	Dealing With Undischarged Bankrupt	821
	(a) The Bankruptcy Act, s. 77	321
	(b) Cohen v. Mitchell	822
	(c) In Re Pascoe	825
	(d) In Re Hord	829
	(e) Tassé Report, pp. 113-115	839
H	Onerous Contracts	840
	(a) The Bankruptcy Act, 1914 (U.K.), s. 54(1)	840
I	Rights of Action	840
	(a) Ritenburg v. Crown Trust	840
J	Defeasible Interests	843
	(a) In Re Burroughs-Fowler	843
K	Proceeds of Insurance Policies	844
	(a) The Bankruptcy Act, s. 71	844

TABLE OF CONTENTS

Chapter 18: Antecedent Transactions

A The Bankruptcy Act, ss. 3, 4, 69-79 846

B Voluntary Settlements 853

(a) The Bankruptcy Act, ss. 69, 70, 76 853
(b) Re Bozanich 853
(c) In Re Brall 857
(d) Tassé Report, p. 115 859

C Reviewable Transactions 859

(a) The Bankruptcy Act, ss. 3, 4, 78, 79 859
(b) Tassé Report, pp. 115-6 859

D Fraudulent Preferences 860

(a) The Bankruptcy Act, ss. 73, 74, 76 860
(b) Duncan and Honsburger, Bankruptcy in Canada, pp. 469-74, 479-81, 484 860
(c) Tassé Report, pp. 116-118 865
(d) The Question of Intent 866
(i) Re B.C. Boat Sales Ltd. 866
(ii) Re Shaugnessy Super Market and Codville Co. Ltd. 872
(e) The Meaning of 'Transaction' 880
(i) Ross v. Royal Bank of Canada 880

TABLE OF CONTENTS

Chapter 19 Bankruptcy: Distributing the Estate

A Provable Claims 887

(a) The Bankruptcy Act, ss. 95-97 887
(b) Tassé Report, p. 119 888

B Scheme of Distribution 889

(a) The Bankruptcy Act, ss. 107-118 889
(b) Tassé Report, pp. 120-124 893

C Secured Creditors 896

(a) The Bankruptcy Act, ss. 49, 50(1), 98-105 896
(b) Tassé Report, pp. 111-112 899
(c) Canadian Consumer Council, Report on Personal Bankruptcy, pp. 6-11 899